

THE APPEALS PANEL

Established under an Agreement dated 16th October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]

CLAIM NUMBER: [REDACTED]

BETWEEN

[REDACTED]

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW and enters the following decision pursuant to section 10 of the Appeal Guidelines:

BACKGROUND

1. The Appellant is [REDACTED], née [REDACTED], born on [REDACTED] 1920 in Vienna (Austria). She is the daughter of [REDACTED], an author, composer and concert pianist, who was born on [REDACTED] 1877 in Vienna (Austria) and died in December 1944 in the Ghetto of Theresienstadt. Her stepfather is [REDACTED], a businessman, who was born on [REDACTED] 1876 in Vienna (Austria).

2. The Respondent is [REDACTED] as the legal successor of “[REDACTED]”. In 1998 “[REDACTED]” was merged with “[REDACTED]” and forms now, after other mergers and renamings part of “[REDACTED]”.
3. The Appellant submitted two claims on forms issued by the Washington State Insurance Commissioner to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that, among others, “[REDACTED]” or “[REDACTED]” issued life and/or business insurance policies. In addition, there are other claims by the Appellant, namely claim no. [REDACTED] (Zurich), claim no. [REDACTED] ([REDACTED]), claim no. [REDACTED] ([REDACTED]), which are not the subjects of the present appeal. A further claim, namely no. [REDACTED] ([REDACTED]) was subject of appeal no. [REDACTED] and was dismissed by the Appeals Panel.
4. The ICHEIC conducted an investigation into the company “[REDACTED]”. The claim was ultimately submitted to the Respondent as the successor of “[REDACTED]”. In its decision letter dated 16th October 2003 the Respondent writes, *“based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives the existence of life insurance policies taken out by Mr. [REDACTED] and Mr. [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement. According to the Foundation Law and the Agreement a claim has to be denied if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances ”*.
5. The Appellant submitted an appeal dated 21st October 2003, which arrived at the Appeals Office on 28th October 2003. In this appeal she sets out the reasons for the appeal and submits a print out from the ICHEIC website (see paragraph 15).
6. A copy of the appeal form was forwarded to the Respondent on 9th February 2004.
7. On 23rd March 2004 the Appeals Office informed both parties that the appeal will be on a *“documents only”* basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
8. On 11th June 2004 the Appeals Office received a response from the Respondent, which states that the letter from the Appeals Office of 9th February 2004 did not arrive until 1st June 2004 (see paragraph 17).
9. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
10. The Appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the Foundation “Remembrance, Responsibility and the Future”, the ICHEIC and the [REDACTED] and its Annexes, including, but not limited to Annex E, the Appeal Guidelines.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

11. The Appellant has submitted the following information in relation to the claim for the proceeds of life and/or business insurance policy (policies):

Claim Form stamped 11th April 2000

- a) In section three the Appellant identifies the insured person as her father, [REDACTED].
- b) She names “[REDACTED] Vienna, Austria, [REDACTED], Berlin, Germany and [REDACTED], Basel, Switzerland” as insurance companies that might have provided coverage.
- c) In section four regarding “*known facts*” the Appellant states, “*Life insurance with [REDACTED] (assumed), [REDACTED] – Berlin Branch – Business Insurance (assumed).*” The Appellant asserts that the coverage was sold in Berlin. In answer to the question “*Why do you believe coverage existed?*” the Appellant writes, “*liability for damages*”.
- d) In section seven concerning other relevant information the Appellant writes, “*Mr. [REDACTED] was a very well known Pianist, Author, Composer and Concert Conductor and very well off with expensive items (antiques, oil paintings etc.)*”.

Second Claim Form

- a) In section three the insured person is identified as the Appellant’s stepfather, [REDACTED]. She asserts that he was the owner of several businesses in Vienna and a partner in an architect’s office.
- b) In answer to the question “*Does/did the insured have any recollection of insurance from that period?*” the Appellant writes, “*by law all businesses had to be insured fully for liability until confiscated by the Nazi*”.
- c) In answer to the question, “*Does/did the insured or other family members remember the names of insurance companies from that era that you believe might have provided coverage?*” the Appellant writes, “[REDACTED], [REDACTED], [REDACTED], [REDACTED].”
- d) In section four regarding “*known facts*” the Appellant asserts that the coverage was sold from Vienna. In answer to the question “*why you believe coverage existed?*” the Appellant writes, “*any businesses in Austria had to be covered by law for Fire, liability, etc.*”
- e) In section five regarding “*basis for belief that a policy was not paid*” the Appellant writes, “*Jewish Holocaust Victim, had to leave (fled) the homeland; all his belongings (privat or business) confiscated and stolen by Nazis; I am the only survivor, all other relatives killed.*”
- f) In section seven regarding “*other relevant information*” the Appellant writes, “*as per enclosed copy of letter dated: 09-01-2000 you have locations and File Nos: from all*”

businesses entertained by my father, which were all subject to Insurance Coverage. Had to my knowledge also Life Insurances and Personal Liability Coverage for him and the family”.

12. With the claim form the Appellant submitted copies of her Austrian passport, her driver’s licence and her identity card from the United States of America. In addition, she submitted a copy of [REDACTED]’s birth certificate and a letter from the American Red Cross stating that [REDACTED] was evacuated on 18th August 1944 to the Ghetto Theresienstadt and died there in December 1944.
13. Also in the claim file are two letters dated 1st September 2000 and 13th December 2000, which were sent from the “*Stadtinformation Magistratsabteilung*” (Municipal Information Department of Vienna) regarding several entries for businesses in the “*Zentralgewerberegister*” (Central Trade Register) for [REDACTED], the Appellant’s stepfather.
14. In her reasons for appeal the Appellant writes: “*Letter points out that [REDACTED] had no ‘business in the Austrian Republic’. [REDACTED] was living from 1938-1933 in Berlin and from 1933 to 1945 in Prag and [REDACTED] operated in both cities. Copies of Computerlisting showing [REDACTED] as ‘rechtskräftiger Polizzeninhaber [legally valid policy holder] and found ‘valid’ and ready to payout (per ICHEIC monthly report) as of 6-28-01. Page 1 of Computerlisting shows all policyholder of [REDACTED]. Please therefore correct your decision and any help is greatly appreciated’.*
15. The Appellant submitted an extract from the ICHEIC website [the “Computerlisting” above] with her appeals form. The Appellant had placed a tick by the name of “[REDACTED], [REDACTED], Prag VII, Tschechoslowakei” (neither the place of issue, nor the insurance company is listed with these names).

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In its decision letter of 16th October 2003 the Respondent writes: “*Based on the information that you have provided in the claims-form we have intensively searched all the relevant archives and records in accordance with the Agreement for information on the specific life insurance policies. Unfortunately no match occurred in our records. We have to point out that in your claim-form you mentioned ‘[REDACTED]’ and ‘[REDACTED]’. These companies are not identical with [REDACTED], which merged with us in 1998. Unfortunately most of the archives and policy data of [REDACTED] have been destroyed during the war in a bombing attack. We have also to point out that [REDACTED] had no business in the territory of the Austrian Republic. In addition external (i.e. state-run) archives of German compensation and restitution authorities were researched in order to ascertain, if the policies on which you are claiming were part of a decision of previous restitution and compensation proceedings...None of the relevant external archives contain any reference regarding a life insurance policy. Based on the information provided by you in the claims-form and after our intensive research in all relevant and external archives the existence of life insurance policies taken out by Mr. [REDACTED] and Mr. [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the Agreement’.*
17. A response from the Respondent to the letter sent by the Appeals Office on 9th February 2004 was not received until 11th June 2004. In this letter the Respondent explains that the delay in responding was due to the fact that it had not received the letter of 9th February

2004 until 1st June 2004. The Respondent writes, “*as companies, which might have issued insurance policies to Mr. [REDACTED] [REDACTED], Mrs. [REDACTED] lists [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. For Mr [REDACTED] [REDACTED], [REDACTED], [REDACTED] and Zürich are listed. We have not found documents in our records that indicate that life insurance policies were issued to the persons listed above. Mrs. [REDACTED] states in her appeal form dated 3rd October 2003 that the name [REDACTED] appears on the list published for [REDACTED](enclosure 1). It is true that there are several former policyholders named [REDACTED] in [REDACTED]’s portfolio, however this is not the former German portfolio. The date of birth of these (other) policyholders, however, is not identical with that of [REDACTED] [REDACTED] ([REDACTED] 1877), thus there is no match. This explains, that the name appears on the ‘[REDACTED]list’, but it is the name of other persons and not of the person searched for. In still existing records of the former portfolio of [REDACTED] [REDACTED] the name [REDACTED] does not appear at all. In addition, Mrs. [REDACTED]’s statements in the claim form dated 26th February 2000 and in the appeal form dated 16th October 2003 are contradicting: in the claim form she states that [REDACTED] lived in Vienna until 1938 and after that until 1944 in Berlin, in the appeal form she writes that he lived from 1918 until 1938 in Berlin and from 1933 until 1945 in Prague. The name [REDACTED] does not appear on the in-force-lists. There also is no indication in our databases for the other persons named in the claim form. As Mrs. [REDACTED] states [REDACTED], [REDACTED] and [REDACTED] using the name [REDACTED], it could be assumed that maybe there were contracts with [REDACTED] or [REDACTED]. These companies are not identical with the [REDACTED] ([REDACTED]) (Group of [REDACTED]). Contradicting Mrs. [REDACTED]’s statement in her appeal letter we repeat that [REDACTED] ([REDACTED]) only operated in the German Reich but not in Vienna (Austria) and also not in Prague (Czechoslovakia).*”

THE ISSUES FOR DETERMINATION

18. The issue for determination in this appeal is whether the Appellant has met her burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
- 17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;
 - 17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and
 - 17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
19. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “*plausible*” rather than “*probable*”. Where the Appellant is not able to submit any documentary evidence in support of the claim, the

Appellant's assertion must have the necessary degree of particularity and authenticity to make it credible that a policy was issued by the company.

20. The Panel concludes that the Appellant has not met her burden of proof that it was "[REDACTED]" which issued the insurance policy. Her evidence lacks the requisite authenticity and particularity; there is no corroborative evidence (such as letters of statements from third parties) to support the Appellant's recollection of the existence of life insurance policy issued by [REDACTED]. The claim forms reflect that she was not sure whether [REDACTED] issued the policy since she recalls the names of several insurance companies, including [REDACTED] and [REDACTED] that might have provided coverage. She gives very few details about the policy other than the place where the policy was sold. The documents she submitted, including those submitted in the claims quoted sub no.3 above, do not prove the existence of a contract between her father or her stepfather and the Respondent, be it for life insurance or business insurance. The extract from the ICHEIC-website [see above paragraph 15] is a list of names, which are not necessarily identical with the name of a policyholder, insured or beneficiary. The surname [REDACTED] is a common name. If this surname appears on this list with a matching first name, such as [REDACTED], it cannot be assumed that this for certain is the Appellant's ancestor. The Appellant's comments in her appeal form are based on a misunderstanding of the meaning of lists published on the Internet by ICHEIC. Those lists are not proof of the existence of insurance; they are just an "instrument" for search purposes, matching, which give hints but no established facts. In addition, the Respondent has stated that there was no match since the date of birth of the other policyholders named '[REDACTED]' did not coincide with the date of birth of the Appellant's father.

Finally, neither the Respondent nor ICHEIC found a research match on its databases when processing the claim. Although the Appeals Panel is aware that the Respondent's databases are very limited, it must not fail to note that no research matches were found.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 28th day of June 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member